IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 15TH MARCH 2007 / 24TH PHALGUNA 1928

OP.No. 22674 of 2001(Y)

PETITIONER:

A.V.FRANCIS,
SALESMAN (UNDER DISMISSAL)
ERATHADATHIL HOUSE,
EZHUMUTTOM, THODUPUZHA,
IDUKKI DISTRICT.

BY ADV. SRI.P.P.JACOB

RESPONDENTS:

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1. KARIMANNOOR SERVICE CO-OP. BANK LTD. NO.967, KARIMANNOOR, IDUKKI DISTRICT REPRESENTED BY ITS SECRETARY.

2. LABOUR COURT, ERNAKULAM.

BY ADV. SRI.GEORGE THOMAS (MEVADA)
GOVERNMENT PLEADER SRI. P.K. RAVIKRISHNAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 15/03/2007, ALONG WITH WPC NO. 32896 OF 2001, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.NO.22674/01.

ORDER ON C.M.P.NO.36974/01 IN O.P.NO.22674/01
DISMISSED

15.03.2007 SD/- S.SIRI JAGAN ,JUDGE

APPENDIX

EXT.P1: TRUE COPY OF DOMESTIC ENQUIRY REPORT DATED 31.10.94.

EXT.P2: TRUE COPY OF LETTER DATED 10.11.94 ISSUED BY THE PRESIDENT OF THE 1ST RESPONDENT.

EXT.P3: TRUE COPY OF COMMUNICATION ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER DATED, 26.11.94.

EXT.P4: TRUE COPY OF REPLY STATEMENT BY THE WORKMEN IN I.D.76/95 DATED23 4.5.99.

EXT.P5: TRUE COPY OF STATEMENT OF THE 1ST RESPONDENT SUBMITTED BEFORE THE KARIMANNOOR POLICE IN C.C. 316-97 DATED 14.2.97.

EXT.P6: TRUE COPY OF DEPOSITION OF THE PETITIONER IN I.D.76/95 DATED 7.9.99.

EXT.P7: TRUE COPY OF PRELIMINARY ORDER DATED 19.7.00 OF THE 2ND RESPONDENT.

EXT.P8; TRUE COPY OF GAZETTE NOTIFICATION DATED 20.3.2001.

/TRUE COPY/

PA TO JUDGE.

S. SIRI JAGAN, J.

O.P.NO. 22674/2001 &
O.P.NO.32896/ OF 2001

DATED THIS THE 15th DAY OF MARCH, 2007

JUDGMENT

These two original petitions arise from the award of the Labour Court, Ernakulam in I.D.No.76 of 1995 at the instance of the workman and the management. Both of them are challenging the award. In O.P.No.22674/01 filed by workman, Ext.P8 is the copy of the award. The issue referred for adjudication is as follows:

> "1. Whether the dismissal of Sri. A.V. Francis, Salesman Textile Department, Karimannoor Service Sahakarana Bank is justifiable.
> 2. If not the relief entitled to him".

2. Since the workman was dismissed from service after conducting a domestic enquriy, the Labour Court considered the validity of the enquiry as a preliminary issue. The Tribunal found that the enquiry was valid and proper having been conducted following all principles of natural justice. Thereafter the Labour Court re-appreciated the evidence adduced in the enquiry and came to the conclusion that the findings of the Enquiry Officer are supported by legal evidence adduced in the enquiry. However, the Labour Court

taking a lenient view converted the punishment of dismissal into one of discharge, exercising powers under Section 11A, of the Industrial Disputes Act.

3. The workman is challenging the award on the ground that the findings of the Enquiry Officer was perverse and the management is challenging the interference by the Labour Court under Section 11A, on the punishment awarded by the management to the workman.

4. I have considered the rival contentions in detail. The learned counsel for the workman although valiantly contended before me that there was no sufficient evidence in the enquiry to find the workman guilty, a perusal of the discussion of the evidence by the Labour Court, I am left with no doubt that the Labour Court has come to the correct finding that the findings of the Enquiry Officer are supported by legal evidence on record. That being so, I do not find any merit in the challenge of the workman against the impugned award.

5. The management would contend that the misconducts which have been found to be proved against the workman is that of misappropriation of money belonging to the management and the said misconducts are grave enough to warrant the extreme punishment of dismissal from service. Hence, according to counsel, the sympathy shown by the Labour Court to interfere with the

punishment is totally misplaced and therefore exercise of powers under Section 11A was not warranted.

6. On a reading of the reasons given by the Labour Court to interfere with punishment under Section 11A, I am of opinion that the interference by the Labour Court is not without adequate materials. He has pointed out certain mitigating circumstances based upon which only the Labour Court has come to the conclusion that the workman does not deserve the extreme punishment of dismissal from service. That being so, I am not inclined to interfere with the discretion exercised by the Labour Court under Section 11A of the Industrial Disputes Act, in this case.

In the above circumstances, both the original petitions are dismissed but without any order as to costs.

S. SIRI JAGAN, JUDGE

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